

2013

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2013

EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Attorney-General**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL
2013**

Overview of the Bill

The Justice and Community Safety Legislation Amendment Bill 2013 (the Bill) makes minor and uncontroversial amendments to a number of laws within the Justice and Community Safety portfolio.

These amendments are consequential to the passage of the *Retirement Villages Act 2012*. The Retirement Villages Bill 2012 was passed on 22 August 2012 and has a default commencement date of 4 March 2013.

The Bill also includes minor and uncontroversial amendments to the *Retirement Villages Act 2012* that are designed to clarify existing provisions and improve the operation of the Act.

Human Rights implications

No provisions in this bill engage rights under the *Human Rights Act 2004*.

ACT Civil and Administrative Tribunal Regulation 2009

This Bill amends the *ACT Civil and Administrative Tribunal Regulation 2009* to allow trust amounts from the equivalent trust account to that used in NSW for re-imbursing the State for the cost of administering the NSW *Retirement Villages Act 1999* to be used for re-imbursing the Territory for the cost of administering the ACT *Retirement Villages Act 2012*. The Regulation also provides for amounts to be used from the trust account for providing advisory and advocacy services for residents and prospective residents of retirement villages.

Civil Law (Property) Act 2006

The *Civil Law (Property) Act 2006* provides for the ejection of lessees and recovery of leased premises. These provisions do not apply to residential leases under the *Residential Tenancies Act 1997* or to leases under the *Leases (Commercial and Retail) Act 2001* as these statutes provide for termination of lease agreements and the end of the lessee's right to remain on the premises.

This Bill inserts reference to residence contracts under the *Retirement Villages Act 2012* as the Act provides for the circumstances in which a residence contract is terminated and when a person's right to live at the retirement village ends. As the Act provides a statutory means for dealing with termination and right to reside, it is consequential on the enactment of the Act that these contracts be excluded from the ejection and recovery provisions in the *Civil Law (Property) Act 2006*.

Civil Law (Sale of Residential Property) Act 2006

This Bill makes a consequential amendment to the *Civil Law (Sale of Residential Property) Act 2006* which substitutes references to retirement villages under the Code to retirement

villages. The provision removes most types of transaction in retirement village units from the conveyancing requirements (including entering into loan-licence agreements), however it also clarifies that if a person is selling or buying a unit in a unit titled retirement village or community title scheme village that the conveyancing requirements will apply.

Fair Trading (Australian Consumer Law) Act 1992

This Bill amends the dictionary definition of “fair trading legislation” in the *Fair Trading (Australian Consumer Law) Act 1992* so that the Commissioner for Fair Trading and investigators appointed by the Commissioner can exercise investigatory functions and ensure compliance under the *Retirement Villages Act 2012*.

Land Titles Act 1925

This Bill inserts reference to the *Retirement Villages Act 2012* as necessary in the Land Titles Act to allow the Minister to determine fees under the Act and for the registrar-general to approve forms.

Residential Tenancies Act 1997

This Bill omits reference to retirement villages from the *Residential Tenancies Act 1997* which currently excludes them from its operation. This is consequential on section 10 of the *Retirement Villages Act 2012*, which specifically excludes from its application residential tenancies between residents and the Housing Commissioner and any residential tenancies which expressly exclude the *Retirement Villages Act 2012*.

Retirement Villages Act 2012

This Bill makes a number of minor and uncontroversial amendments to the *Retirement Villages Act 2012*.

Most of the amendments are technical in nature or clarify the existing provisions. Some of the amendments are designed to make the Act easier to read and understand.

New section 15A which is proposed to be inserted by this Bill is based on equivalent provisions in the NSW Act relating to the application of the Act in relation to people who currently occupy, or have a right to occupy, a former retirement village. This provision was originally identified as being transitional in nature and was intended to be placed in a transitional regulation as it was seen as affecting existing residence contracts or arrangements.

The provision has since been identified as being a substantive provision which has an ongoing effect and is not transitional in nature. For example, the provision is relevant to current retirement villages which may cease to be retirement villages in the future.

It is proposed that this provision be inserted by this Bill, while the equivalent definition of “former retirement village” as provided for in section 11(6) of the NSW *Retirement Villages Act 1999* be provided for in a transitional regulation as it includes reference to retirement villages that ceased to be retirement villages before commencement of the Act.

CLAUSE NOTES

Clause 1 Name of Act

This Act is the *Justice and Community Safety Legislation Amendment Act 2013*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on the later of the day after the Act's notification day and the commencement of the *Retirement Villages Act 2012*, section 3.

Clause 3 Legislation amended-sch 1

This clause provides that the legislation mentioned in schedule 1 is amended by the Act.

Schedule 1 Consequential Amendments

Part 1.1 ACT Civil and Administrative Tribunal Regulation 2009

Clause 1.1 New section 10

This Regulation provides for money to be paid out of the equivalent trust account as in NSW to meet the costs of administering the *Retirement Villages Act 2012* and the provision of advisory and advocacy services to residents and prospective residents.

Part 1.2 Civil Law (Property) Act 2006

Clause 1.2 New section 402(4)(a)(iii)

This clause inserts reference to a residence contract under the *Retirement Villages Act 2012* into section 402(4)(a). This is intended to exclude residence contracts under the Act from the operation of the ejection provisions.

Clause 1.3 New section 436(1)(a)(iii)

This clause inserts reference to a residence contract under the *Retirement Villages Act 2012* into section 436(1)(a). This is intended to exclude residence contracts under the Act from the operation of part 4.7 which provides for recovery of leased premises.

Part 1.3 Civil Law (Sale of Residential Property) Act 2003

Clause 1.4 Section 8 (2) (c)

This clause substitutes reference to a retirement village under the Code of Practice with a reference to a retirement village. It also includes a reference to an interest in a retirement village that is not a unit or a lot in a community title scheme under the *Community Title Act 2001*.

This is intended to remove most transactions involving residence contracts (eg entering loan-licence agreements) from the operation of the conveyancing requirements but to clarify that where a person buys or sells a unit in a unit titled retirement village or a lot in a community title scheme the transaction will be subject to the conveyancing requirements.

Clause 1.5 Section 20, definition of *premises*, new paragraph (ea)

This clause inserts an identical clause to that described in clause 1.4 in the definition of premises in section 20, which relates to the EER requirements in part 3. This clarifies that retirement villages are exempt from the EER conveyancing requirements unless they involve the sale or purchase of a unit in a unit titled retirement village or a lot in a community title scheme.

Clause 1.6 Section 20, definition of *retirement village*

This clause omits the existing definition of retirement village in section 20.

Clause 1.7 Dictionary, definition of *retirement village*

This clause defines retirement village in the dictionary by reference to section 10 of the *Retirement Villages Act 2012*.

Part 1.4 Fair Trading (Australian Consumer Law) Act 1992

Clause 1.8 Dictionary, definition of *fair trading legislation*, new paragraph (ga)

This clause inserts reference to the *Retirement Villages Act 2012* in the definition of “fair trading legislation”.

Part 1.5 Land Titles Act 1925

Clause 1.9 Section 139(1), except examples and note

This clause substitutes a new clause which includes reference to *Retirement Villages Act 2012*. It provides for the Minister to determine fees, charges and other amounts.

Clause 1.10 Section 140(1)

This clause substitutes a new clause which includes reference to *Retirement Villages Act 2012*. It provides for the Registrar-General to approve forms.

Part 1.6 Residential Tenancies Act 1997

Clause 1.11 Section 4 (a)

This clause omits section 4(a) from the *Residential Tenancies Act 1997*. This is consequential on the passage of section 10 of the *Retirement Villages Act 2012* which provides that residential tenancies agreements between residents and the Housing Commissioner are excluded from the *Retirement Villages Act 2012*, as are other residential tenancies agreements that exclude the operation of the *Retirement Villages Act 2012*.

This is to avoid the possibility of a situation where residents would not have the protection of either the *Retirement Villages Act 2012* or the *Residential Tenancies Act 1997*.

Part 1.7 Retirement Villages Act 2012

Clause 1.12 Section 7 (1), definition of *operator*, paragraph (b) (iii), except note

This clause substitutes existing section 7(1)(b)(iii) with a paragraph which includes reference to new section 15A(1)(d). New section 15A is described below at clause 1.19.

Clause 1.13 New section 7(3)

This clause inserts a definition of body corporate of a community title scheme for the section. As the term appears only once in the Act it is relocated to the section from the dictionary.

Clause 1.14 Section (8)(1), definition of residence right

This clause clarifies the definition of residence right to ensure consistency with the use of this defined term throughout the Act.

Clause 1.15 Section 9

This clause substitutes reference to “in relation to the residence” to “in relation to the residential premises”. It ensures consistency in drafting throughout the Act.

Clause 1.16 Section 14 heading

This clause substitutes “residence” with “residential premises” in the heading to section 14 to ensure consistency in terminology.

Clause 1.17 Section 14 (1) (d)

This clause corrects a cross-reference.

Clause 1.18 Section 14 (2)

This clause substitutes “residence” with “residential premises” to ensure consistency in terminology.

Clause 1.19 New section 15A

This clause inserts into part 2 an equivalent provision to a provision in NSW which applies the Act to people who are occupying or who have occupancy rights in relation to a retirement village that has ceased to be a retirement village.

This provision was originally identified as being transitional in nature as it refers to former retirement villages. However it has since been identified as a substantive provision which has prospective effect (i.e. it applies to retirement villages that after commencement of the *Retirement Villages Act 2012* cease to be retirement villages).

As the NSW provision also includes reference to former villages that ceased to be retirement villages before commencement, an equivalent provision has been drafted as a transitional provision.

Clause 1.20 Section 20 (1), note

This clause corrects a cross-reference.

Clause 1.21 Section 21 (2) (c) (i)

This clause substitutes a reference to “and” with a reference to “or”.

The subparagraph currently makes it an offence if the operator tells a prospective resident that a certain service will be made available, enters into a contract, but the contract does not state that the service is to be made available and the day by when it will be made available.

This clause corrects a conjunction. The operator under the revised section will be committing an offence if the contract doesn’t state that the service is to be made available or the day by which it will be made available.

Clause 1.22 Section 22 (6)

This clause corrects a cross-reference.

Clause 1.23 Section 32, definition of *trustee*, paragraph (d)

This clause corrects a cross-reference.

Clause 1.24 Section 37 (3)

This clause substitutes “residence” with “residential premises” to ensure consistency in terminology.

Clause 1.25 Section 42 (1), new notes

This clause inserts new standard notes for approved forms and fees.

Clause 1.26 Section 58 (1)

This clause re-casts the existing provision to make it easier to read and understand.

Clause 1.27 Section 68 (1)

This clause clarifies the existing provision in section 68(1) about standard forms prescribed under the Act.

Clause 1.28 Section 68 (4) (a)

This clause clarifies the existing provision in the Act.

Clause 1.29 Section 68 (4) (b) (ii)

This clause substitutes the current provision with a new provision which includes a reference to a term required to be included in a residence contract by regulation made under section 66. This makes the provision more consistent with other provisions in the Act.

Clause 1.30 Section 81(2)

This clause substitutes “an existing” with “a” as it applies to all residence contracts and should apply prospectively to new contracts.

Clause 1.31 Section 82 heading

This clause substitutes “an existing” with “a” in the heading as it applies to all residence contracts and should apply prospectively to new contracts.

Clause 1.32 Section 82

This clause substitutes “an existing” with “a” as it applies to all residence contracts and should apply prospectively to new contracts.

Clause 1.33 Section 118, note, second paragraph

This clause re-casts the current note to make it easier to read.

Clause 1.34 Section 122 (3) (a)

This clause, similar to clause 1.29, substitutes the current provision with a new provision which includes a reference to a term required to be included in a residence contract by regulation and the terms of any standard form contract.

Clause 1.35 Section 135

This clause revises the term “capital item” to include the substance of the equivalent NSW term “item of capital”. The clause also relocates from the dictionary definitions of terms that are used only in division 7.2.

Clause 1.36 Section 151 (9)

This clause omits section 151(9) which provides that an offence against the section is a strict liability offence. However there is no offence in the section.

Clause 1.37 Section 154 (5) (f)

This clause substitutes reference to the *Unit Titles Act 2001* with the *Unit Titles (Management) Act 2011* as it relates to contributions raised by the owners corporation of a units plan.

Clause 1.38 Section 157 (1) (a) and (b)

This clause corrects grammatical errors and substitutes the term “territory authority” with the term “territory entity”, because “territory entity” has a broader definition in the *Legislation Act 2001*.

Clause 1.39 Section 159 (5) (a) (i)

This clause substitutes a reference to “have” with a reference to “seek” which makes the provision clearer and brings the meaning closer into line with the corresponding provision in the NSW legislation.

Clause 1.40 Section 160 (1)

This clause inserts words that are missing in the existing provision.

Clause 1.41 Section 162 (1)

This clause substitutes a reference to “have” with a reference to “seek” which makes the provision clearer and brings the meaning closer into line with the corresponding provision in the NSW legislation.

The combination of clauses 1.41 and 1.42 clarifies the procedure that an operator must take to seek residents’ consent for annual budget spending. Residents will be taken to have refused to consent to the budget if the operator fails to seek the resident’s consent, or if the residents fail to tell the operator whether they consent or do not consent to the budget (refer existing section 162(6)).

Clause 1.42 New section 162 (2A)

This clause inserts a new subsection which clarifies when a retirement village operator is taken to have complied with requirements under section 162 (1). This brings the operation of the provision more into line with the corresponding NSW provision.

Clause 1.43 Section 162 (8)

This clause corrects a cross-reference.

Clause 1.44 Section 166 (3), note

This clause corrects a cross-reference.

Clause 1.45 Section 168 (3) and note

This clause provides for the circumstance where there is no residents committee. The operator is taken to comply with the section if the quarterly accounts are displayed on the common property in the way prescribed by regulation.

This is consistent with similar provisions in the Act for compliance by an operator where there is no residents committee.

Clause 1.46 Section 169 (3) (b)

This clause substitutes a reference to residents with a reference to occupants. This is consistent with other provisions in the Act which refer to “former occupants” and not “former residents”.

Clause 1.47 Section 170 (2) (b) (i)

This clause corrects a cross-reference.

Clause 1.48 Section 177 (2)

This clause re-casts section 177(2) to omit 177(2)(a) as it is superfluous – see *Legislation Act 2001*, section 176.

Clause 1.49 Section 179

This clause omits this section as it is superfluous – see *Legislation Act 2001*, section 176.

Clause 1.50 Section 184 (2)

This clause re-casts section 184(2) to require that notice must be given within the time prescribed by regulation. Notes are included about approved forms and fees in section 184(2), consistent with ACT drafting practice.

Clause 1.51 Section 185 (1) (a) (ii)

This clause substitutes a reference to residence with residential premises to ensure consistency in terminology.

Clause 1.52 Section 185 (1) (b)

This clause substitutes reference to authority with entity as entity has a broader definition in the *Legislation Act 2001*.

Clause 1.53 Section 187 (4)

This clause omits an unnecessary provision.

Clause 1.54 Section 207 heading

This clause substitutes a reference to residence with residential premises to ensure consistency in terminology.

Clause 1.55 New section 207 (1A)

This clause clarifies that the section, which defines “permanently vacated” includes the definition used in section 14.

Clause 1.56 Section 235 (5)

This amendment corrects a cross-reference.

Clause 1.57 Section 238 (5) and (6)

This clause omits sections 238 (5) and (6) as clause 1.58 relocates the requirement to a new section, due to the length of existing section 238.

Clause 1.58 New section 238A

This clause inserts the requirements currently provided for in sections 238(5) and 238(6).

Clause 1.59 Section 260 (3)

This clause omits section 260(3) as the subsection is not needed in addition to section 261.

Clause 1.60 Section 261 (4)

This clause inserts words missing from the subsection. A scheme is mentioned in section 261(1) and not in section 261(4).

Clause 1.61 Section 263 (1), new note

This amendment inserts a note to assist the reader.

Clause 1.62 Section 500, definition of *existing contract*

This clause extends section 500 to include existing service contracts in addition to existing residence contracts. This brings existing service contracts within the transitional part 20 of the Act and saves their existing terms.

Clause 1.63 Section 501 heading

This clause clarifies that section 501 relates to residence contracts.

Clause 1.64 Section 501

This clause clarifies that section 501 relates to residence contracts.

Clause 1.65 New section 501A

This clause ensures that the terms of an existing service contract are saved, in the same way that the terms of existing residence contracts are saved in part 20.

Clause 1.66 Section 502 (1)

This clause substitutes a reference to agreement with a reference to an existing contract or other agreement.

Clause 1.67 Section 504(4)

This clause omits the two year expiry for section 504(4). The five year expiry provision will apply to section 504 consistent with the remainder of part 20.

Clause 1.68 Dictionary, definition of *body corporate*

This clause omits the definition of “body corporate” from the dictionary as it is only referred to once in the Act. The definition has been relocated to the relevant section.

Clause 1.69 Dictionary, definitions of *capital maintenance and capital replacement*

This clause substitutes the current definitions with a reference to section 135 of the Act where they have been relocated with the related term “capital item”.

Clause 1.70 Dictionary, definition of *common property*

This clause omits the definition of “common property” in the dictionary as this refers only to common property in a units plan or community title scheme. Definitions are included in the section where the term appears in relation to a units plan or community title scheme.

Elsewhere in the Act the term “common property” is used but not within the meaning given in the dictionary and this may create confusion.

Clause 1.71 Dictionary, definition of *item of capital*

This clause omits the term “item of capital”. The term “capital item” is used instead in division 7.2.

Clause 1.72 Dictionary, definition of *permanently vacate*

This clause omits the definition of “permanently vacate” in the Act. A definition of “permanently vacated” is provided for in clause 1.73.

Clause 1.73 Dictionary, new definition of *permanently vacated*

This clause clarifies the meaning of “permanently vacated”.

Clause 1.74 Dictionary, definition of *units plan*

This clause directs the reader to the dictionary to the *Unit Titles Act 2001* for the meaning of “units plan” in substitution of a reference to section 9 of that Act.